Filed 7/16/19 Katun International v. Exworks Capital CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KATUN INTERNATIONAL, INC. et al., Plaintiffs and Appellants, v. EXWORKS CAPITAL, LLC et al. Defendants and Respondents.	B289783 (Los Angeles County Super. Ct. No. BC677752)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed, in part, and reversed, in part.

Weiss & Spees, Michael H. Weiss; Kozberg & Bodell, Joel M. Kozberg, for Plaintiffs and Appellants.

Paul Hastings, William Sullivan, D. Scott Carlton, Lily Lysle, for Defendants and Respondents.

Plaintiffs and Appellants Katun International, Inc. (KII) and HNB Capital, LLC (HNB), appeal the trial court's judgment of dismissal following an order sustaining demurrers to their first amended complaint for fraud, negligent misrepresentation, breach of contract, and promissory estoppel[1] without leave to amend in favor of defendants and respondents, ExWorks Capital, LLC (ExWorks) and its CEO Randy Abrahams (Abrahams).

We affirm the trial court's judgment on the cause of action for breach of contract, the sole cause of action brought by KII. We reverse the trial court's judgment on the causes of action brought by HNB, for fraud and negligent misrepresentation.

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[1] In their reply brief, plaintiffs state that they no longer wish to appeal dismissal of the promissory estoppel cause of action.

FACTS[2]

KII is a Delaware corporation with its principal place of business in Redondo Beach, California. HNB is a California limited liability company with its principal place of business in Redondo Beach, California. HNB is KII's sole shareholder. ExWorks is a Delaware limited liability company with its principal place of business in Chicago, Illinois, and offices in Laguna Niguel, California. ExWorks is a senior secured debt fund that provides necessary liquidity to businesses in need of financing, and distinguishes itself from its competitors in part by its ability to consistently and efficiently close the deals it proposes.

In late July of 2015, HNB contacted ExWorks seeking financing to acquire Katun Holdings, L.P. (Katun). In June of 2015, HNB had entered into a Letter of Intent (LOI) with Katun's unit holders (Sellers) for HNB or its nominee to purchase all of the equity in Katun for the aggregate purchase price of $55,000,000 (the Acquisition). The LOI provided an estimated closing date for the Acquisition of August 30, 2015, and provided that HNB would form a new entity to acquire Katun. Sellers made clear that the Acquisition must be concluded promptly. HNB formed KII to serve as the acquiring entity on or about August 21, 2015.

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[2] In accordance with the standard of review on appeal, we state the material facts properly pleaded in the first amended complaint as true. (*McAllister v. Los Angeles Unified School Dist.* (2013) 216 Cal.App.4th 1198, 1206.)

During negotiations, Abrahams, the chief executive officer of ExWorks, communicated with Howard Brand (Brand), the managing member of HNB, regarding the possible financing by ExWorks. HNB informed ExWorks that the target closing date for the Acquisition was on or about September 30, 2015, and that it was necessary to close the financing promptly. ExWorks required that HNB engage with it exclusively. The combination of the Sellers' timeframe and ExWorks's exclusivity requirement meant that if HNB moved forward with ExWorks it would not have the ability to conclude the financing of the Acquisition with an alternative financing source. ExWorks's ability to provide the funding for the Acquisition within Sellers' required timeframe was therefore material to HNB's decision to engage with ExWorks, and it chose to move forward with the transaction on that basis.

HNB sought assurances from ExWorks regarding its ability to fund the Acquisition on August 6 and August 13, 2015. In both instances Abrahams communicated to Brand—orally on August 6, and in a written communication on August 13—that ExWorks had the ability to fund a financing in the amount required for the Acquisition, within the required timeframe for closing the Acquisition, and would do so, assuming that specific financing terms were agreed upon by ExWorks and HNB, and that ExWorks's underwriting of the proposed financing confirmed HNB's representations regarding Katun and the Acquisition. On August 13, 2015, Abrahams went so far as to provide a

written assurance that ExWorks "would not engage" if it did not have the ability to fund the transaction. Abrahams did not disclose that ExWorks would have to secure funding from third parties to fund the Acquisition or that if ExWorks was unable to obtain the required funds from third parties within the available compressed timeframe it would be unable to provide the financing, even if its underwriting of the financing resulted in an approved loan.

ExWorks and HNB exchanged multiple drafts of a proposed agreement for the financing of the Acquisition. HNB advised ExWorks that it would form KII to acquire Katun's equity per the LOI. On or about August 20, 2015, ExWorks delivered to Brand a proposed letter agreement (Letter Agreement) between ExWorks and KII detailing the terms upon which ExWorks proposed to extend the financing for the Acquisition. ExWorks had obtained the Sellers' approval of the Letter Agreement prior to delivery.

As pertinent here, the Letter Agreement, a copy of which was attached to the first amended complaint, "confirm[ed] [ExWorks's] interest in pursuing a credit facility ('Facility') under the terms and conditions set forth . . . ." It advised that "this is a discussion proposal only; any funding of the Facility for [ExWorks] are [*sic*] subject to due diligence, legal documentation and credit committee approval."

At the bottom of the first page, the Letter Agreement stated in bold typeface: "This letter is for discussion purposes only. This is not a commitment to extend credit in

any form and remains subject to due diligence, credit approval, and documentation. No oral communications between the parties shall be deemed to supersede this letter or indicate any commitment to extend credit in any form."

Under the heading "Syndication," the proposed terms provided: "[ExWorks] anticipates holding the entire Credit Facility until maturity. At any time, [ExWorks] may choose to syndicate any portion of the Credit Facility on a pro-rata basis to qualified 3rd party financial institutions. [KII] will pay for any appraisals or third party due diligence for a TBD lender post close. [¶] [ExWorks] will serve as the sole Administrator and Collateral Agent for the syndicated Credit Facility. [KII]'s management, advisors and owners, agree to assist with any such effort."

The proposal expired if the Acquisition did not close on or before September 30, 2015, unless extended in writing by ExWorks.

To initiate the review process, the terms required KII to remit a deposit of $100,000 to be applied to financial due diligence fees and expenses incurred by ExWorks, which was fully refundable less any reasonable actual out of pocket expenses.

Following the proposed terms, the Letter Agreement stated:

"THE TERMS OF THIS PROPOSAL ARE PROVIDED FOR DISCUSSION PURPOSES ONLY AND DO NOT IMPLY IN ANY WAY A COMMITMENT BY [EXWORKS] TO LEND OR AN OFFER TO UNDERWRITE, BUT

RATHER A PROPOSAL TO PROCEED WITH FURTHER REVIEW OF THIS TRANSACTION, WHICH SUCH REVIEW MAY BE TERMINATED BY [EXWORKS] IN ITS SOLE DISCRETION."[3] (Discretion Clause)

"[ExWorks] will make the Facility summarized in this Proposal available to [KII] only upon the satisfactory completion of further due diligence and underwriting of the transaction, final approval through [ExWorks]'s credit approval process, [ExWorks]'s continuing satisfaction with the financial and business conditions of [KII] and its principals, and upon receipt of documentation and assurances satisfactory to [ExWorks] and its legal counsel." (Due Diligence Clause)

"Until the transaction proposed herein is consummated or a determination is made by [ExWorks] not to pursue such transaction, [KII] agrees to negotiate exclusively with [ExWorks] for a 180 day period regarding any financing the purpose of which is substantially the same as that of the proposed Facility."

On August 21, 2015, KII executed the Letter Agreement and provided the $100,000 deposit for due diligence expenditures and an additional $10,000 to ExWorks to fund background checks.

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[3] Plaintiffs refer to this clause as the Discretion Clause, and the clause that follows it (quoted above) as the Due Diligence Clause. We include these labels for ease of reference.

On or about September 2, 2015, KII and Sellers concluded the Acquisition Agreement, with a closing date of September 30, 2015. ExWorks was informed of the closing date and represented it could conclude its work necessary to satisfy the conditions to the financing of the Acquisition, and, if the conditions were satisfied, fund the financing of the Acquisition by the closing date.

ExWorks commenced due diligence. As part of the financing review for the Acquisition, KII disclosed to ExWorks its plan to change how Katun managed its inventory and thereby materially increase its earnings. KII also disclosed the plan to "a key employee" at Katun, who it intended to serve as CEO of one of Katun's business units after the Acquisition. During due diligence, ExWorks requested, and KII obtained from Sellers, an extension of the closing date until October 7, 2015. Sellers informed KII that no further extensions would be granted. KII informed ExWorks, which again confirmed that it could timely fund the Acquisition.

ExWorks completed due diligence on or before October 3, 2015. On that same date, in response to Brand's request to discuss the status of the financing, Abrahams sent an e-mail to Brand, stating: "Howard – one of our key investors is moving around on structure in debt side as of this a.m., we [sic] also need to hear from French family office on final terms of preferred before I can repair it or get someone else in that spot. They were to answer Friday but will now be

Monday." The e-mail also stated that ExWorks "otherwise [has] no issues."

On October 4, 2015, Abrahams sent an e-mail to the Sellers' representative advising that all of the documents for the financing of the Acquisition were complete and were being reviewed by HNB. That same day, ExWorks and Brand finalized the schedule for disbursement of the proceeds of ExWorks's financing of the Acquisition.

The only unresolved issue was that ExWorks lacked the necessary funds. As a result, on October 7, 2015, ExWorks informed KII that it could not fund the financing and would have to "stand down." Having agreed to negotiate with ExWorks exclusively, plaintiffs were unable to obtain alternative financing, and the Sellers cancelled the Acquisition on October 8, 2015.

Prior to the cancellation of the Acquisition, plaintiffs expended time and money in connection with ExWorks's financing of the Acquisition. In addition to the $110,000 for due diligence, which was not refunded, plaintiffs spent substantial time and incurred fees and additional expenses in excess of $50,000.

After the Acquisition was cancelled, Katun implemented KII's proposed operational changes that KII had disclosed to a Katun employee in pre-Acquisition discussions, which resulted in a material increase in Katun's value.

In or about October 2017, Sellers entered into a binding agreement to sell Katun for approximately

$95,000,000 to another buyer, which was expected to close in or about 2018.

PROCEDURAL HISTORY

First Amended Complaint

On January 11, 2018, plaintiffs filed the operative first amended complaint. As relevant here, HNB alleged causes of action for fraud and negligent misrepresentation against ExWorks and Abrahams, and KII alleged breach of contract as to ExWorks only.[4]

With respect to the fraud and negligent misrepresentation causes of action, HNB alleged that defendants either negligently or intentionally misrepresented that ExWorks had sufficient funds to complete the Acquisition, and failed to disclose that it planned to seek funding from third-party lenders, in order to induce HNB to cause KII to work exclusively with ExWorks as the provider of financing for the Acquisition. Based on the misrepresentations, HNB caused KII to work with ExWorks exclusively and was precluded from seeking alternative financing, which it would not have done absent ExWorks's false representations. As a result, it had no

[4] HNB also alleged promissory estoppel as to ExWorks, which we do not discuss, as plaintiffs have abandoned their challenge to the trial court's order sustaining the demurrer with respect to that cause of action.

alternative financing available to it when ExWorks failed to fund the Acquisition. Plaintiffs were deprived of Katun's appreciation in value, and also incurred expenses and expended time that they would not have had HNB known the true facts.

As to KII's breach of contract claim against ExWorks, the first amended complaint alleged that the Letter Agreement was an enforceable conditional contract, which obligated ExWorks to fund the Acquisition if certain conditions precedent detailed in the Due Diligence Clause were met. KII met those conditions, but ExWorks failed to fund the Acquisition because it lacked the necessary funds, and thereby breached the contract. KII, which was bound not to seek alternative financing by the terms of the Letter Agreement, was deprived of Katun's appreciation in value and also incurred expenses and expended time when the Acquisition was cancelled.

Demurrers

On February 14, 2018, defendants filed demurrers to all causes of action contained in the first amended complaint. Defendants argued that KII failed to state a cause of action for breach of contract. They asserted that the Letter Agreement was a proposed term sheet, not a binding contract, and clearly stated that it was for discussion purposes only and not a commitment to lend. Defendants argued that HNB failed to state a cause of action for fraud or

negligent misrepresentation because HNB did not specifically allege the facts that led it to believe ExWorks did not have the ability to fund the transactions. With respect to the allegation that ExWorks withheld the information that it needed to obtain funding from third parties from whom it had not yet secured binding commitments, defendants argued that HNB did not allege that ExWorks knew it would rely on third-party lenders at the time that KII signed the Letter Agreement, and regardless, the Letter Agreement's terms included that ExWorks had the right to "syndicate any portion of the Credit Facility," so HNB should have been aware that ExWorks may not be the only lender involved in the transaction. Finally, defendants argued that the terms preserved ExWorks's right not to proceed with the financing transaction as the sole lender in its discretion.

Opposition to Demurrers

Plaintiffs filed an opposition to the demurrers on March 13, 2018. Plaintiffs first argued that KII had pleaded sufficient facts to support a breach of contract cause of action, because the terms of the Letter Agreement indicated that it was a conditional contract that would result in ExWorks's having an obligation to fund the transaction if KII met certain conditions. Specifically, the conditions included completion of due diligence and underwriting, final approval through ExWorks's credit approval process, continuing satisfaction with the financial and business

conditions of KII and its principals, and receipt of documentation and assurances satisfactory to ExWorks and its legal counsel, as set forth in the Due Diligence Clause. KII argued that it met these conditions, triggering the obligation, but that ExWorks failed to fund the transaction as promised because it lacked the funds, thus breaching the contract. To the extent that ExWorks argued the Letter Agreement's terms expired after September 30, 2015, it waived the argument by requesting that KII ask Sellers for an extension.

Plaintiffs argued that they also sufficiently alleged causes of action for fraud and negligent misrepresentation. They asserted that they pleaded fraud with the requisite specificity, relying on "information and belief" only as to "conclusions of ultimate fact regarding the state of mind of Defendants as to their wrongful conduct," facts that were not within HNB's personal knowledge. Finally, plaintiffs argued that the fact that the Letter Agreement's terms gave ExWorks the option to syndicate the loan did not undermine HNB's argument that ExWorks withheld the critical information that it did not have the ability to fund the transaction alone and that it would be imperative to rely on third parties to finance the Acquisition. The terms indicated an option to syndicate the loan rather than an imperative.

Reply to Opposition to Demurrers

Defendants replied on March 19, 2018, reiterating that the repeated and unambiguous disclaimers in the Letter Agreement absolved ExWorks of any obligation to provide financing, which defeated all of the causes of action contained in the first amended complaint. With respect to the breach of contract cause of action, plaintiffs did not respond to defendants' argument that the Letter Agreement stated it was for discussion purposes only and not a commitment to extend credit in any form, insisting that it was a binding contract although that conclusion was not reasonably supported by the terms. Even if the court was to accept this strained interpretation, the agreement automatically expired on September 30, 2015, prior to KII's satisfaction of the terms.

Defendants argued that the fraud and negligent misrepresentation claims did not plead specific facts to support HNB's assertion that the representations were false at the time that they were made or that they caused the alleged damages. The Letter Agreement stated that ExWorks could syndicate the loan, so HNB was aware of the possibility when KII signed the Letter Agreement.

Hearing

At the hearing, the trial court indicated its tentative ruling to sustain the demurrers. It stated, "I think this

August 20th, 2015, letter, which is attached as an exhibit to the first amended complaint, is under no fair reading a contract. It is a proposal with disclaimer language sprinkled throughout . . . [¶] . . . [¶] Your opposition doesn't even deal with the disclaimer language."

Plaintiffs' counsel argued that the disclaimer language was "intended to mean that it is not a present commitment not subject to condition, but there are conditions that need to be [met] . . . ." The trial court disagreed, stating, "No. It's in plain English." "It's in bold print, page 7. It's also on page 1, by the way. And it says, quote, 'The terms of this proposal are provided for discussion purposes only and do not imply in any way a commitment by [ExWorks] to lend or underwrite,' et cetera, et cetera. [¶] I don't know how it could be more clearly set forth." The trial court stated its belief that the parties agreed ExWorks would conduct due diligence, but that ExWorks never extended a formal offer to lend.

Plaintiffs' counsel argued that KII satisfied the conditions of the Letter Agreement, which triggered ExWorks's obligation. ExWorks had never disclosed that the loan was conditioned on its own ability to obtain funds. ExWorks's ability to fund the transaction was material, because HNB would never have agreed to exclusivity if it had known ExWorks did not have sufficient funds to complete the transaction on its own. Counsel argued there

was "an oral side deal different than [the] letter proposal."[5] Counsel further argued that there was an ambiguity between the disclaimers in the Letter Agreement and the Due Diligence Clause, which stated that ExWorks would make the loan only if certain conditions were met.

The trial court questioned the specificity of the fraud and negligent misrepresentation claims, noting that having "the ability to fund," was not the same thing as having the money. Counsel stated plaintiffs could amend the complaint to state that ExWorks stated it had the money.

Defense counsel reiterated that the Letter Agreement clearly stated it was for discussion only and not a commitment to lend. The fraud and negligent misrepresentation claims failed because they were not sufficiently specific and absent a binding commitment to lend, plaintiffs could not prove causation for the alleged loss.

The trial court stated that it did not believe the negligent misrepresentation claim was viable, in light of the fact that ExWorks had no duty to HNB in an arm's length transaction.

Plaintiffs' counsel then argued that HNB relinquished its ability to go to another lender based on ExWorks's representation that it had money to fund the transaction. The trial court asked if that was in the contract, and counsel admitted that it was not, but asserted that it was part of the oral discussions.

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[5] Counsel then conceded that plaintiffs had abandoned their claim for breach of oral contract.

The trial court took the matter under submission.

Trial Court's Ruling

On March 29, 2018, the trial court issued an order summarily sustaining the demurrers without leave to amend the first amended complaint. The trial court dismissed plaintiffs' claims and entered judgment against them on April 23, 2018.

Plaintiffs timely appealed.

DISCUSSION

Standard of Review

"'On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed "if any one of the several grounds of demurrer is well taken. [Citations.]" [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if

the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]' [Citation.]" (*McAllister v. Los Angeles Unified School Dist.*, *supra*, 216 Cal.App.4th at p. 1206.)

Breach of Contract

KII contends that it pleaded a sufficient cause of action for breach of contract based upon the Letter Agreement. It argues that the Due Diligence and Discretion clauses conflict, creating an ambiguity that requires reversal of the trial court's order. We disagree.

"'Where a written contract is pleaded by attachment to and incorporation in a complaint, and where the complaint fails to allege that the terms of the contract have any special meaning, a court will construe the language of the contract on its face to determine whether, as a matter of law, the contract is reasonably subject to a construction sufficient to sustain a cause of action for breach.' (*Hillsman v. Sutter Community Hospitals* (1984) 153 Cal.App.3d 743, 749–750, fn. omitted.) . . . '[T]he rule on demurrer is simply a variation on the well-recognized theme that "It is . . . solely a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence." [Citations.]' (*Id.* at p. 750, fn. 4.)" (*Davies v. Sallie Mae, Inc.* (2008) 168 Cal.App.4th 1086, 1091.)

"A cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (*CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239.)

"'Preliminary negotiations or an agreement for future negotiations are not the functional equivalent of a valid, subsisting agreement. "A manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent." [Citation.]' [Citation.]" (*Beck v. American Health Group Internat., Inc.* (1989) 211 Cal.App.3d 1555, 1562.)

Here, KII's sole theory of breach of contract is based on the contention that ExWorks committed to providing financing for the transaction if no issues arose during its due diligence. The Letter Agreement, however, includes no such commitment. To the contrary, the Letter Agreement expressly disclaims a commitment to lend, stating: "THE TERMS OF THIS PROPOSAL ARE PROVIDED FOR DISCUSSION PURPOSES ONLY AND DO NOT IMPLY IN ANY WAY A COMMITMENT BY [EXWORKS] TO LEND OR AN OFFER TO UNDERWRITE . . . ." In its express language and operation, the Letter Agreement sets forth an agreement by which ExWorks will undertake a review of the transaction to decide whether to proceed with funding. It is

a "PROPOSAL TO PROCEED WITH FURTHER REVIEW OF THIS TRANSACTION, WHICH SUCH REVIEW MAY BE TERMINATED BY [EXWORKS] IN ITS SOLE DISCRETION." The language could not be clearer, and KII offers no persuasive reason to look beyond the plain text of the document. KII does not allege that the terms contain special language, nor could it. As the trial court emphasized, the Letter Agreement is unambiguous—"It's in plain English." The bottom of the first page precludes looking beyond the document on the issue of whether ExWorks committed to lend: "No oral communications between the parties shall be deemed to supersede this letter or indicate any commitment to extend credit in any form." ExWorks did not intend to create a binding agreement to lend, and KII could not have reasonably believed that it intended to do so. The Due Diligence Clause does not conflict with the disclaimers in any way. It simply states the minimum requirements without which ExWorks would not fund the Acquisition if an agreement was reached in the future. ("[ExWorks] will make the Facility summarized in this Proposal available to [KII] only . . . .")

The trial court did not sustain the demurrer as to KII's breach of contract claim in error. KII relies exclusively on the Letter Agreement to establish its breach of contract claim. The Letter Agreement cannot be reasonably interpreted as a contract to lend by its plain terms, thus there can be no breach.

Finally, KII does not identify any way in which it could amend the first amended complaint with respect to its breach of contract claim. There is therefore no basis to reverse the trial court's order sustaining the demurrer without leave to amend as to that cause of action.

Fraud and Negligent Misrepresentation

HNB contends it alleged causes of action for fraud and negligent misrepresentation, and that the trial court erred in sustaining the demurrer. Defendants argue that HNB has not sufficiently pleaded misrepresentation, actual reliance, justifiable reliance, or causation. We address each of these arguments in turn, and conclude that HNB has pleaded the elements of fraud and negligent misrepresentation with the requisite specificity. We reverse the judgment and the order sustaining the demurrer with respect to those causes of action.

Legal Principles

"The elements of fraud, which give rise to the tort action for deceit, are (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) justifiable reliance, and (5) resulting damage. [Citation.] The tort of negligent misrepresentation, a species of the tort of deceit [citation], does not require intent to defraud but only the

assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true." (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255.)

"'A plaintiff asserting fraud by misrepresentation is obliged to . . . "'establish a complete causal relationship' between the alleged misrepresentations and the harm claimed to have resulted therefrom."' [Citation.] . . . First, the plaintiff's actual and justifiable reliance on the defendant's misrepresentation must have caused him to take a detrimental course of action. Second, the detrimental action taken by the plaintiff must have caused his alleged damage." (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1062 (*Beckwith*).)

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) The normal policy of liberally construing pleadings against a demurrer will not be invoked to sustain a fraud cause of action that fails to set forth such specific allegations. (*Ibid.*) The heightened pleading standard for fraud requires "'pleading *facts* which "show how, when, where, to whom, and by what means the representations were tendered."' [Citation.]" (*Ibid.*) Thus, "every element of the cause of action for fraud must be alleged in full, factually and specifically . . . ." (*Wilhelm v. Pray, Price, Williams & Russel* (1986) 186 Cal.App.3d 1324, 1331.)

Analysis

Misrepresentation

HNB has sufficiently pleaded that ExWorks misrepresented that it had funding. The first amended complaint alleged two statements, one verbal and one in writing, made by ExWorks' principal Abrahams to HNB's representatives Brand and Edward Saldana, in the two weeks before KII and ExWorks finalized the Letter Agreement. In an August 6, 2015 telephone conversation, Abrahams told the HNB representatives that Ex Works had the ability to fund the required amount, and on August 13, 2015, Abrahams responded to a specific request for assurance about ExWorks's ability to fund the Acquisition that ExWorks "would not engage" if it could not. Yet on October 3, 2015, Abrahams notified Brand for the first time that ExWorks did not have the necessary funds and also revealed for the first time that ExWorks needed to obtain additional third-party funding.[6] ExWorks argues that

[6] Because we conclude that the allegations that defendants made affirmative misrepresentations were sufficiently pleaded, we need not address defendants' argument that HNB's fraud and negligent misrepresentation claims are not actionable under an omissions theory—i.e., that defendants failed to disclose that they did not have sufficient funds to fund the Acquisition alone or that they intended to utilize third-party lenders to fund the Acquisition.

HNB's allegations of falsity are improperly based on "information and belief," but a fair reading of the complaint is that ExWorks's inability to fund the transaction revealed the falsity of defendants' earlier representations.

Actual Reliance

ExWorks asserts that HNB failed to allege actual reliance because it was not induced to enter into a new contractual arrangement—KII was party to the Letter Agreement, not HNB. HNB's claim of inducement is not based on the Letter Agreement between KII and ExWorks, however; it is based on HNB's alteration of its own legal position in reliance on defendants' misrepresentations that ExWorks had the money to fund the Acquisition. To plead fraud, a plaintiff is not required to allege that he was induced to enter into a contract; rather he must plead facts to support the assertion that he """"""alter[ed] his legal relations""""""" in a way that he would not have absent his belief in the defendant's misrepresentations. (*Beckwith*, *supra*, 205 Cal.App.4th at pp. 1062–1063, quoting *Hall v. Time Inc.* (2008) 158 Cal.App.4th 847, 855, fn. 2.) HNB alleged that, following negotiations with defendants, HNB altered its legal position by creating KII, assigning its Acquisition rights to KII, and causing KII to agree to negotiate exclusively with ExWorks. HNB further alleged that it would not have taken these actions if it had known that ExWorks did not have the money to fund the

Acquisition, but would have instead sought alternative financing. These factual allegations sufficiently plead actual reliance.

Justifiable Reliance

Defendants' argument that the terms contained in the Letter Agreement fatally undermine HNB's contention that it justifiably relied on its earlier oral representations also lacks merit. Defendants argue that the disclaimer in the Letter Agreement that states "[n]o oral communications between the parties shall be deemed to supersede this letter or indicate any commitment to extend credit in any form" precludes HNB from relying on the communications between Abrahams and Brand in early August. We find defendants' position unpersuasive for several reasons.

First, it relies on the legal principle that an integration clause effectively supersedes *all* prior communications. California courts have soundly rejected that "a contract provision stating that all representations are contained therein . . . bar[s] an action for fraud." (*Ron Greenspan Volkswagen, Inc. v. Ford Motor Land Development Corp.* (1995) 32 Cal.App.4th 985, 992.)

Second, there is no conflict between the terms in the Letter Agreement and the oral representations defendants allegedly made. The terms do not address whether ExWorks was required to have sufficient funds to fund the Acquisition as the sole lender, and are therefore not contradicted in that

respect. Nor does the fact that the terms provided ExWorks the option of syndicating the loan undermine its prior representations that it was capable of funding the Acquisition without outside assistance. In fact, the terms indicate otherwise, as they state that ExWorks "anticipates holding the entire Credit Facility until maturity."

Third, HNB alleged that on August 13, 2015, Abrahams provided a written assurance that ExWorks "would not engage" if it did not have the ability to fund the transaction. The clause stating that oral communications may not supersede the terms does not apply to written communications.

Causation

We also reject defendants' argument that HNB has not sufficiently pleaded that the alleged misrepresentations were the proximate cause of its injuries because it was the termination of the contract and not the misrepresentations that resulted in the alleged harm. HNB alleged that defendants represented ExWorks had the ability to fund the Acquisition and assured HNB that it "would not engage" otherwise, and that HNB changed its legal position based on these misrepresentations, giving to ExWorks the exclusive right to fund the Acquisition. Absent the misrepresentations, HNB would have obtained financing from alternative funding sources. HNB further alleged that, just before closing, defendants indicated that ExWorks had

completed due diligence and "otherwise [had] no issues," yet on October 7, 2015, the day the transaction was to close, "ExWorks advised KII that it could not fund the financing of the Acquisition and it was 'best [that ExWorks] to [*sic*] stand down' as a financing source." Thus, the first amended complaint specifically alleged that ExWorks represented it could fund the financing of the Acquisition in negotiations with HNB, but then ultimately withdrew solely because it did not have the financing it specifically assured HNB that it had. HNB has sufficiently pleaded causation.

Giving the complaint a reasonable interpretation, and treating the demurrer as admitting all facts properly pleaded, we conclude that the trial court sustained the demurrer in error, and reverse as to the fraud and negligent misrepresentation causes of action.

DISPOSITION

We affirm the trial court's judgment as to the breach of contract cause of action, but reverse the judgment as to the causes of action for fraud and negligent misrepresentation, and remand to the trial court for further proceedings as to those claims. ExWorks is awarded its costs on appeal as to KII. HNB is awarded its costs on appeal as to ExWorks and Abrahams.

MOOR, J.

We concur:

BAKER, Acting P. J.

KIM, J.